

1 Also in the December 5, 2013 re-designation, Defendants designated Special Agent
2 Steve Epperson, who they named as an expert in their original designation, and whose
3 designation this court approved. But Defendants also designated four non-party
4 employees of the California Department of Corrections and Rehabilitation (CDCR) as
5 “percipient witnesses who were involved in the process of Plaintiff’s prison-gang
6 validation...[and who] should be allowed to provide expert testimony as to the policies
7 and procedures they and Defendants relied upon in acting as they did during Plaintiff’s
8 gang-validation procedures.” Opp’n, p.2. All four proposed expert witnesses “will
9 testify as to the CDCR’s gang validation procedures, whether those procedures were
10 properly applied and followed by Defendants in this case . . . , how they were applied,
11 and whether the evidence used to validate Plaintiff was reliable and sufficient to do so.”
12 Opp’n, p.4.

13 As this court already explained in its November 9, 2012 order, a court may exclude
14 cumulative expert testimony. *United States v. Alisal Water Corp.*, 431 F.3d 643, 659-660
15 (9th Cir. 2005). Here, Epperson, the prison gang expert assigned to R.J. Donovan
16 Correctional Facility, will testify as to gang validation proceedings at both the
17 institutional and review levels, including Plaintiff’s gang validation proceedings and the
18 operations of the Mexican Mafia. Opp’n, p.3; Dkt. No. 72, p.4. The proposed testimony
19 of the four non-parties Contreras, Rosenkrans, Marquez, and Harrison appears cumulative
20 of Epperson’s testimony. Defendants do not cite to any distinct policies or procedures
21 that any of these non-parties will testify to or how their testimony will otherwise differ
22 from Eppard’s and from each other’s testimony. *See Engman v. City of Ontario*, No. 10-
23 284, 2011 WL 2463178, at *13-14 (C.D. Cal. June 20, 2011) (determining two expert’s
24 testimony is cumulative if there is a significant overlap). Therefore, the court finds that
25 the proposed testimony of the proposed “non-party experts” significantly overlaps with
26 Epperson’s testimony, and therefore, is cumulative.

27 Further, the non-parties are, according to Defendants, percipient witnesses in this
28 case. Again, as the court already explained in its November 9, 2012 order:


1 A witness's dual role of being a lay witness and expert witness
2 creates concerns such as "unmerited credibility" for lay
3 testimony, an increased danger of conveying the witness's
4 sweeping conclusions, and difficulty for some jurors to
5 determine the line between lay testimony and expert testimony.
6 *U.S. v. Freeman*, 498 F.3d 893, 904 (9th Cir. 2007). [Non-
7 parties Contreras, Rosenkrans, Marquez, and Harrison] intend
8 to explain to the jury their actions in Plaintiff's gang validation
9 proceedings. In doing so, it appears that [Contreras,
10 Rosenkrans, Marquez, and Harrison] are likely to provide
11 conclusions that justify their actions. It is also possible that
12 [Contreras, Rosenkrans, Marquez, and Harrison] will receive
13 "unmerited credibility" on their factual story due to their
14 capacity as experts. This Court, therefore, finds that allowing
15 [Contreras, Rosenkrans, Marquez, and Harrison] to testify as
16 experts is prejudicial.

17 Dkt. No. 80 p.4.

18 The court **GRANTS** Plaintiff's Motion to Strike.

19 **IT IS SO ORDERED.**

20 DATED: February 24, 2014

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Hon. Nita L. Stormes
U.S. Magistrate Judge
United States District Court